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PIER 1 IMPORTS (U.S.), INC.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

BYRON CHAPMAN,  
  
Plaintiff,  
  
v.

PIER 1 IMPORTS (U.S.), INC. dba PIER 1  
IMPORTS #1132; R/M VACAVILLE LTD.;  
and DOES 1 through 10,  
  
Defendants.

Case No. CIV.S-04-1339 LKK DAD

**STIPULATION AND PROPOSED ORDER  
RE CONFIDENTIALITY**

Complaint Filed: July 13, 2004  
Honorable Lawrence K. Karlton

WHEREAS, in the course of this litigation, discovery may be sought of information that the parties regard as being of a confidential, proprietary, privileged and/or private nature; and

WHEREAS, the parties hereto desire to establish a mechanism to protect the confidentiality of such information;

IT IS HEREBY STIPULATED, by and between Defendants Pier 1 Imports (U.S.), Inc., R/M Vacaville Ltd. and Plaintiff Byron Chapman and their respective attorneys of record, that:

1           1.       In connection with the discovery proceedings in this action, Defendants may designate  
2 any document, thing, material, testimony or other information derived therefrom that Defendants  
3 reasonably believe contain confidential, proprietary or trade secret information as “Confidential” under  
4 the terms of this Stipulation (hereinafter “Stipulation”). Similarly, Plaintiff may designate as  
5 “Confidential” any document, thing, material, portion of testimony or other information derived  
6 therefrom that contains his social security number, which he believes is private information.

7           2.       Material designated as “Confidential” under this Stipulation, the information contained  
8 therein, and any summaries, copies, abstracts, notes, or other documents derived in whole or in part  
9 from material designated as confidential (hereinafter “Confidential Material”) shall be used only for  
10 the purposes of the prosecution, or settlement and/or appeal of this action, and for no other purpose.

11           3.       Except with the prior consent of the producing party or upon prior order of this Court,  
12 discovery material designated “Confidential” pursuant to paragraph 1 above shall not be disclosed  
13 directly or indirectly by the receiving party or his or its counsel to persons other than the following, as  
14 to whom disclosure shall be limited to the extent reasonably necessary for the prosecution, defense,  
15 and/or appeal of this action:

16                   a)       The Court, persons employed by the Court, and stenographers transcribing the  
17 testimony or argument at a hearing, trial, or deposition in this action or any appeal therefrom;

18                   b)       Counsel for the parties in this action, including paralegals, and secretarial  
19 employees who are assisting counsel in the prosecution, defense, and/or appeal of this action;

20                   c)       Independent experts and consultants retained or employed by counsel in  
21 connection with the prosecution, defense, and/or appeal of this action;

22                   d)       Confidential material shall not be disclosed to attorneys who are not involved in  
23 the management, prosecution or defense of this litigation or to attorneys who were not involved in the  
24 underlying matters that are the subject of the litigation.

25           4.       Any producing party shall designate Confidential Materials at the time of their  
26 production by marking any originals or copies of the documents or other tangible materials with the  
27 legend “Confidential” or a substantially similar legend at the time of their production. Marking first  
28 page of multi-page document is sufficient to designate entire document as confidential.

1           5.       The parties' attorneys of record may use Confidential Material in written interrogatories  
2 and requests for admission served upon opposing parties. Such interrogatories and requests for  
3 admissions and responses thereof, to the extent that they contain or disclose any Confidential Material,  
4 shall be so designated and delivered only to counsel, to the parties or to persons designated in  
5 paragraph 3 herein, and shall be filed with the Court in the manner provided in paragraph 8 hereof.

6           6.       Any part of the transcription or recording of testimony taken at deposition or elsewhere,  
7 or the transcription or recording as a whole, including exhibits thereto, may be designated as  
8 Confidential by making a statement to that effect on the record at the deposition or other proceeding.  
9 Arrangements shall be made with the Court Reporter taking and transcribing such proceeding to  
10 separately bind such portions of the transcript containing information designated as Confidential, and  
11 to label such portions appropriately.

12           7.       If any Confidential Material is included in any papers, pleadings, memorandum,  
13 affidavit or transcripts that are filed with the Court, the parties will follow Local Rules 39-140 and 39-  
14 141, or other applicable Court rules. The parties understand and agree that, subject to evidentiary  
15 objections, the Court may consider Confidential Material to reach a resolution of this matter.

16           8.       This Stipulation shall be without prejudice to the right of the parties: a) to bring before  
17 the Court at any time the question of whether any particular document or information is Confidential;  
18 or b) Defendants' right to present a motion to the Court for a separate protective order as to any  
19 particular document or information, including restrictions differing from those as specified herein. Any  
20 such motion shall be subject to the Court's rules governing discovery motions.

21           9.       This Stipulation is entered solely for the purpose of facilitating the exchange of  
22 documents and information between the parties to this action without involving the Court  
23 unnecessarily in the process. Nothing in this Stipulation, nor the production of any information or  
24 document under the terms of this Stipulation, nor any proceedings pursuant to this Stipulation shall be  
25 deemed to have the effect of an admission or waiver by either party or of altering the confidentiality or  
26 non-confidentiality of any such document or information or altering any existing obligation of any  
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1 party or the absence thereof. Nothing in this Stipulation shall be deemed to impact in any way a  
2 parties' right to object to any discovery requests or responses on any grounds.

3 10. If a subpoena issued in connection with any other litigation calls or arguably calls for  
4 the production by the recipient of the subpoena ("Recipient") of Confidential Materials produced to  
5 Recipient by any other person in this action, then the Recipient shall promptly provide notice of the  
6 subpoena to the producing party's attorneys of record. Prior to the subpoena return date, the producing  
7 party shall have the right to file a motion to quash in order to stay any production pending the outcome  
8 of the motion.

9 11. Discovery material shall lose their confidential status if the content or substance thereof:  
10 a) becomes part of the public domain, unless as a result of (i) action or failure to act, where there is a  
11 duty to act, on the part of the receiving party, or (ii) any breach of duty by any third party, or (iii) any  
12 violation of this Stipulation; or b) is made available to the receiving party by a third party who  
13 obtained the same by legal means and without any obligation of confidence to the producing party.

14 12. Neither the taking of any action in accordance with the provisions of this Stipulation,  
15 nor the failure to object hereto shall be construed as a waiver of any claim or defense in this action.  
16 This Stipulation shall not be construed as a waiver of any right to object to the furnishing of  
17 information in response to discovery (except based on the need for a protective order) and, except as  
18 expressly provided, shall not relieve any party or witness of the obligation to produce information  
19 properly sought in the course of discovery. Nothing herein shall be construed to affect in any way the  
20 admissibility of any document, testimony, or other evidence at trial of this action. Nothing contained  
21 in this Stipulation or any declaration of confidentiality or restriction hereunder shall be used or  
22 characterized by any party as an "admission" by a party opponent.

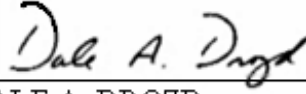
23 13. Execution of this Stipulation shall be without prejudice to any motion for further  
24 restriction on the production, exchange, or use of any document or other information in the course of  
25 this action; provided, however, that no such motion shall be made after the entry of a final judgment or  
26 settlement.  
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28 14. Nothing herein shall impose any restriction on the use or disclosure by a producing  
party of its own documents or information, including the deposition testimony of its employees or



1 SO ORDERED.

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3 Dated: April 22, 2005

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7 DALE A. DROZD  
8 UNITED STATES MAGISTRATE JUDGE

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